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NO. 84-724

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

TEXAS A & M UNIVERSITY, ET AL,
Appellants,

v.

GAY STUDENT SERVICES, ET AL,
Appellees.

On Appeal From The United States Court Of Appeals For The Fifth Circuit

APPELLEES' SUPPLEMENTAL BRIEF

J. PATRICK WISEMAN
NELSON & MALLETT
3303 Main, Suite 300
Houston, Texas 77002
(713) 526-1778

LARRY SAUER
4803 Montrose, Suite 11
Houston, Texas 77006
(713) 526-5235
Attorneys for Appellees

Of Counsel:
STEVEN A. ROSEN
ABBY R. RUBENFELD
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
132 West 43rd Street
New York, New York 10036
(212) 944-9488

Alpha Law Brief Co., Inc.—5606 Parkersburg—Houston, Texas 77036—223-3003

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PRELIMINARY STATEMENT

Appellants are seeking to interject new arguments before the Court by suggesting that Texas A & M University is required to give financial support to Gay Student Services (GSS). It is clear from the Fifth Circuit ruling that Texas A & M University's failure to give financial support has no basis in the Court's holding. These new and novel arguments are surely not supported by any

reading of the Fifth Circuit opinion. GSS never requested financial support from the University. GSS only desires equal access to University facilities which are made available to all other student groups on the Texas A & M University campus.

Pure speech is involved. The goals and purposes of GSS have only to be referred to for confirmation of the position. *Gay Student Services v. Texas A & M University,* 737 F.2d 1317, 1320 (5th Cir. 1984).

Being a homosexual is not illegal nor has ever been illegal in Texas. Homosexual conduct has not been illegal in Texis since 1982. *Baker v. Wade,* 553 F.Supp. 1121 (N.D. Tex. 1982) 743 F.2d 236 (5th Cir. 1984). This issue is moot. Membership of GSS is not predicated upon homosexual contact but rather is open to heterosexuals and homosexuals alike, as evidenced by one of the purposes of GSS: "to provide a forum for the interchange of ideas and constructive solutions to gay people's problems." 737 F.2d at 1320. Students who have gay siblings or other relatives obviously would be allowed and encouraged to join in order to better understand and relate to their family members.

The "physical, psychological and disease" (Reply P. 2) argument is frivolous. To begin with, Appellants affirmatively assert that "The University admits homosexual students and has homosexual employees." (Reply P. 2). They further agree that "GSS has been meeting regularly since 1976 without interference from the University." (Reply P. 1). No evidence was offered to show any empirical link, at Texas A & M University or any other college campus which has recognized groups similar to GSS, between the presence of such groups and a rise in

the negative physical, psychological and disease ramifications that Appellants attempt to associate with recognition. Moreover, the University's argument, if accepted, allows for no principled distinction between precluding GSS from campus status and precluding groups such as GSS to exist at all on or off campus. To be logically consistent, Appellants argument must be extended to exclude homosexuals from campus whether organized or not. The ultimate result of acceptance of the Appellants' argument would be to accept quarantine of all homosexuals, a goal specifically advocated and approved by the Appellants trial "expert," Dr. Paul Cameron.

Finally, Appellants' fraternal organization argument has been extensively briefed and dealt with by the Fifth Circuit, 737 F.2d at 1331, meriting no further discussion.

I.

APPELLANTS ARE NOT ENTITLED TO AN APPEAL OF RIGHT PURSUANT TO THE PROVISIONS OF 28 U.S.C. § 1254(2)

The Texas A & M Board of Regents' "policy position" (737 F.2d at 1322) can in no reasonable fashion be considered a "state statute" for purposes of 28 U.S.C. § 1254 (2). The Board of Regents' only act was to defend the pending lawsuit and thereby lend after the fact support to the actions of a university administrator. In their Jurisdictional Statement (p. 6) Appellants agree that it was Dr. Koldus, Vice-President for Student Affairs, who issued the letter denying recognition to GSS.

If taken to its logical conclusion, Appellants' argument that the action of the Board of Regents qualifies as a

"state statute" would mean that the statement or "policy position" of the head of any state administrative agency would have the same effect. Surely, such an expansive and radical reading of § 1254(2) was not contemplated by Congress.

II.

APPELLANTS ARE NOT ENTITLED TO APPEAL BY WRIT OF CERTIORARI BECAUSE OF A CONFLICT IN THE CIRCUITS

The Fifth Circuit, unlike Appellants, did not misread or misapply the decisions of the various Circuits. There is no conflict.

In the instant case, as in *Gay Students Organization v. Bonner,* 509 F.2d 652 (1st Cir. 1974), and in *Gay Alliance of Students v. Matthews,* 544 F.2d 162 (4th Cir. 1976), there was no evidence of acts inciting conduct and no conflict in the decisions. Therefore, it is a disingenous position that Appellants are attempting to proffer.

Appellants continue to assert *Dronenburg v. Zech,* 741 F.2d 1388 (D.C. Cir. 1984) and *Board of Education v. National Gay Task Force,* 729 F.2d 1270 (10th Cir. 1984), *cert. granted,* 53 U.S.L.W. 3235 (U.S. Oct. 2, 1984) No. 83-2030, as being in conflict with the Fifth Circuit, whereas, the issues decided are clearly different as seen by Rule 17.1(a) of the Supreme Court Rules. *Dronenburg* dealt with military rights and *Board of Education* is not concerned with privacy laws.

The Circuits have dealt fairly and adequately with the issues presented thereby alleviating the need for any further interpretation of federal law.

III.

CONCLUSION

Appellants continue to rely heavily on the admitted bias and prejudice of Dr. Paul Cameron to support their position. Such an appeal to prejudice should not be countenanced.

Gay Student Services is seeking equal access to university facilities which has been denied since 1976. They wish to exercise their First Amendment Rights as do the many other student organizations. For all the grounds previously stated, Appellees respectfully submit that jurisdiction be denied.

Respectfully submitted,

LARRY SAUER
4803 Montrose, Suite 11
Houston, Texas 77006
(713) 526-5235
State Bar No. 17674000

Attorney for Appellees

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Appellees' Supplemental Brief has been furnished to all counsel of record listed below by placing the same in the United States mail, certified, return receipt requested, this _____ day of February, 1985, in accordance with Sup. Ct. R. 28.

Jim Mattox, Attorney General of Texas
Ann Kraatz, Assistant Attorney General
Supreme Court Building
Post Office Box 12548
Austin, Texas 78711
For Defendants

Grant Cook and John O. Tyler, Jr.
Reynolds, Allen & Cook
3300 Allied Bank Plaza
Houston, Texas 77002
For Appellant Texas A & M University

Thomas J. Coleman, Jr.
Ross, Banks, May, Cron & Cavin
9 Greenway Plaza Coastal Tower, Suite 2014
Houston, Texas 77046
For amicus - Texas Human Rights Foundation

William Charles Bundren
Jackson, Walker, Winstead, Cantwell & Miller
4300 Interfirst I Building
Dallas, Texas 75202
For amicus - Dallas Doctors Against AIDS, Inc.

Nadine Taub
Rutgers University Law School
Newark, New Jersey 07102
For amicus - American Public Health Association

LARRY SAUER